

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:

NEIGHBORS LEGACY HOLDINGS, INC.,  
*et al.*,

Debtors.

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Chapter 11

Case No. 18-33836

(Jointly Administered)

**LIQUIDATING TRUSTEE’S OBJECTION TO BIOTECHNOLOGY INTEGRATION  
AND MANAGEMENT, LLC’S CLAIMS 428 AND 437**

**THIS IS AN OBJECTION TO YOUR CLAIM. THIS OBJECTION ASKS  
THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS  
BANKRUPTCY CASE. IF YOU DO NOT FILE A RESPONSE WITHIN 30  
DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM  
MAY BE DISALLOWED WITHOUT A HEARING.**

Tensie Axton, Trustee (the “Liquidating Trustee”) of the Liquidating Trust (the “Liquidating Trust”) of Neighbors Legacy Holdings, Inc. and certain of its affiliates and subsidiaries (the “Debtors”), files her *Objection to Biotechnology Integration and Management, LLC’s Claims 428 and 437* (the “Objection”).

**I. PRELIMINARY STATEMENT**

1. Biotechnology Integration and Management, LLC (“Biotech”) filed claims 428 and 437 (the “Claims”), each asserting a secured claim of \$240,000.00 based on “Business Development Consulting Services Provided” and a “UCC-1 Filing.” First, claim 437 is a duplicate of 428 and should be disallowed. Additionally, there is no basis to treat Biotech’s claim as secured; the claim is based on a prepetition consulting agreement between Biotech and the Debtors for the Debtors’ emergency center located in Rhode Island. There is no security agreement or other agreement that granted Biotech a lien against any of the Debtors’ property, nor a statutory basis to assert a lien. Even if Biotech’s purported lien were valid, the Debtors do not have any assets in



Rhode Island to which a lien could attach. Any of the Debtors' personal property in Rhode Island is wholly encumbered by the Debtors' secured lenders. The Liquidating Trustee requests that Claim 437 be disallowed as a duplicate claim and further requests that Claim 428 be reclassified as an unsecured claim.

## **II. JURISDICTION**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This Objection is a core proceeding arising under title 11 pursuant to 28 U.S.C. § 157(b)(2)(B). The Court has constitutional authority to enter a final order in this matter under *Stern v. Marshall*, 564 U.S. 462 (2011).

## **III. BACKGROUND**

3. On July 12, 2018 (the "Petition Date"), the Debtors filed these chapter 11 cases. On February 20, 2019, the Debtors filed their *First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* (the "Plan").<sup>1</sup> [Docket No. 772].

4. On March 22, 2019, the Court entered its *Order Approving Debtors' Second Amended Disclosure Statement and Confirming Debtors' First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* (the "Confirmation Order"). [Docket No. 847].

5. The Plan and the Confirmation Order established the Liquidating Trust and approved the Liquidating Trust Agreement, which appointed the Liquidating Trustee to, among other things, object to claims filed as administrative, priority, or secured claims. *See* Liquidating Trust Agreement [Docket No. 802-1]. Pursuant to the Plan, the Debtors' estates are deemed

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<sup>1</sup> Terms not specifically defined in this Motion shall be defined by the Plan.

consolidated for purposes of making distributions to holders of allowed claims.

6. On November 14, 2018, Biotech filed its Claims, each asserting a secured claim of \$240,000.00 against the Debtors based on a purported “UCC-1 Filing.” Pre-petition, the Debtors and Biotech entered into that certain Consulting Agreement, dated August 1, 2015 (the “Consulting Agreement”), which Biotech attaches to its Claims. Generally, the Consulting Agreement provides that Biotech will provide health care consulting services to the Debtors and the Debtors will pay Biotech the lesser of \$10,000.00 per month or \$350.00 per hour. To the best of the Liquidating Trustee’s knowledge, the Debtors never received an invoice from Biotech.

7. The Claims attach an identical purported “UCC-1 Form,” in favor of Biotech and against “Neighbors Health System Inc/Neighbors Legacy Holdings Inc,/NEC West Warwick Emergency Center, LP DBA: Neighbors Emergency Center.”

8. Although the Consulting Agreement provides for payment to Biotech, it does not grant Biotech a security interest in the Debtors’ property.

#### **IV. OBJECTION**

9. Biotech does not hold a secured claim against the Debtors—the Debtors have not granted Biotech a security interest in their property and Biotech asserts no basis for a statutory lien. Claim 428 should be reclassified as a general unsecured claim and Claim 437, as a duplicate claim, should be disallowed in its entirety.

10. Under section 502 of the Bankruptcy Code, a proof of claim is deemed allowed “unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Section 502 lists objectionable claims, including claims that are “unenforceable against the debtor and property of the debtor . . .” 11 U.S.C. § 502(b)(1). A proof of claim loses its *prima facie* validity under Bankruptcy Rule 3001(f) when an objecting party refutes at least one allegation that is essential to the claim’s legal

sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988). The burden then shifts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Still, “the ultimate burden of proof always lies with the claimant.” *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) (citing *Raleigh v. Ill. Dep’t of Rev.*, 530 U.S. 15 (2000)).

11. The Debtors closed their Rhode Island location pre-petition and did not own the Rhode Island real property. To the extent any of the Debtors’ personal property remained at the Rhode Island location, any property is wholly encumbered by the Debtors’ secured lenders.

12. While the Consulting Agreement does provide for payment to Biotech for consulting services, the Consulting Agreement does not grant Biotech a security interest in any of the Debtors’ property.

## **V. CONCLUSION**

13. The Liquidating Trustee respectfully requests that the Court i) disallow Claim 437 in its entirety; ii) disallow Claim No. 428 as a secured claim; and iii) grant the Liquidating Trustee such other and further relief to which she may be entitled.

Dated: Houston, Texas  
October 14, 2019.

**PORTER HEDGES LLP**

By: /s/ John F. Higgins  
John F. Higgins  
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**COUNSEL FOR TENSIE AXTON,  
LIQUIDATING TRUSTEE OF THE  
NLH LIQUIDATING TRUST**

**CERTIFICATE OF SERVICE**

This will certify that on October 14, 2019, I caused a true and correct copy of the foregoing Objection to be served via CM/ECF and via United States mail, postage prepaid, and electronic mail on the party listed below.

Biotechnology Integration and Management, LLC  
Gregory A. Mercurio, Jr.  
20 Riata Drive  
Lincoln, RI 02865  
gamercuriojr@gmail.com

/s/ John F. Higgins  
John F. Higgins

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<hr/> <b>In re:</b>  <b>NEIGHBORS LEGACY HOLDINGS, INC., <i>et al.</i>,</b>  <b>Debtors.</b> <hr/>	§ § § § § § §	<b>Chapter 11</b>  <b>Case No. 18-33836</b>  <b>(Jointly Administered)</b>
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**AFFIDAVIT OF TENSIE AXTON IN SUPPORT OF  
OBJECTION TO BIOTECHNOLOGY INTEGRATION AND  
MANAGEMENT, LLC'S CLAIMS 428 AND 437**

STATE OF TEXAS           §  
                                     §  
COUNTY OF HARRIS    §

BEFORE ME, the undersigned authority, on this day personally appeared TENSIE AXTON, known to me to be the person whose name is subscribed below and, who being duly sworn, stated the following:

1. My name is Tensie Axton and I am the Liquidating Trustee in the above-styled case. I am a CPA with more than 25 years of experience in finance and accounting, including extensive experience in the healthcare industry. Prior to serving as the Liquidating Trustee, beginning in December 2016, I was the Debtors' Chief Financial Officer. Before starting as the Debtors' Chief Financial Officer, I was the Chief Operating Officer of a healthcare company where I developed and managed a multispecialty medical practice group.

2. I am generally familiar with the Debtors' financing arrangements, business affairs and books and records that reflect, among other things, the Debtors' liabilities and the amounts owed to their creditors as of the Petition Date. I have reviewed the Claims and the Objection filed contemporaneously with this Affidavit.<sup>1</sup>

3. To the best of my knowledge, information, and belief, the assertions made in the Objection are accurate. I have reviewed the Debtors' books and records and the Claims, as well as the supporting documentation provided by Biotech, and have determined that the Claims should be disallowed.

4. After reviewing the Claims, I determined that Claim 437 is a duplicate of Claim 428.

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<sup>1</sup> Capitalized terms used but not defined in this declaration shall be defined by the Objection.

5. Pre-petition, the Debtors entered into the Consulting Agreement with Biotech.

6. The Debtors did not grant Biotech a security interest in any of the Debtors' property.

7. To the best of my knowledge, the Debtors never received an invoice from Biotech.

8. Pre-petition, the Debtors closed their Rhode Island location. The Debtors did not and do not own the real property at the Rhode Island location. As of the Petition Date, substantially all of the Debtors' assets, including any assets at the Rhode Island location, were fully encumbered by the Debtors' secured lenders.

9. Failure to disallow the Claims could result in Biotech being paid when it is not entitled to payment. As such, I believe that the disallowance of the Claims is appropriate.

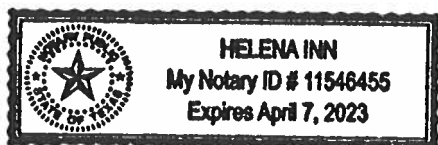
10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information, and belief.

Dated: October 14, 2019

*JA*  
Tensie Axton, C.P.A.

SUBSCRIBED TO AND SWORN TO before the undersigned authority on this 14<sup>th</sup> day of October, 2019.

*Helene Inn*  
Notary Public in and for the State of Texas



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
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Chapter 11

Case No. 18-33836

(Jointly Administered)

ORDER SUSTAINING LIQUIDATING TRUSTEE'S  
OBJECTION TO BIOTECHNOLOGY INTEGRATION AND  
MANAGEMENT, LLC'S CLAIMS 428 AND 437

Upon consideration of the *Liquidating Trustee's Objection to Biotechnology Integration and Management, LLC's Claims 428 and 437* (the "Objection"),<sup>1</sup> the Court concludes that good cause exists to sustain the Liquidating Trustee's Objection.

It is therefore **ORDERED** that Biotech's Claim 437 is disallowed in its entirety. It is further **ORDERED** that Biotech's Claim No. 428 is disallowed as a secured claim.

**SIGNED:**

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MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE

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<sup>1</sup> All terms not specifically defined herein shall be defined by the Objection.